IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1274 OF 2004

Shri Shivaji Mahadu Pawar & Anr. ..Appellants

Versus

Shri Ashok Dagu Pawar ..Respondent

Mr.S.M.Sabrad for appellants

WITH

SECOND APPEAL NO.1264 OF 2004

Shri Shivaji Mahadu Pawar and Anr. ..Appellants

Versus

Smt.Chandrabhagabai Dagu Pawar ..Respondent

Mr.S.M.Sabrad for appellants

CORAM : P.V.KAKADE, J.

DATE : 5TH JULY, 2005.

P.C.:

1. Both these appeals are being heard and disposed of by this common order as they involved same issues. The parties are same, and therefore, are heard together.

2. The appellants have preferred these appeals against the judgement and order passed by the learned Addl. District Judge, Nashik dated 1.1.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Pimpalgaon (B) dated 1.8.2000 in respect of ownership of two Tamarind trees standing in the land of the plaintiffs.

3. I have heard the learned counsel for the appellants in both the appeals. Perused the record.

4. The plaintiffs filed the suit for declaration and injunction against the defendant on the ground that the suit land Gat No.39 is belonged to them wherein two old Tamarind trees are standing. The defendant was obstructing their possession and enjoyment of the said

trees and fruits thereof and hence the suit came to be filed. The defendant contested the suit on various grounds. The learned trial judge adjudicated the dispute and came to the conclusion on the basis of available evidence that the plaintiffs had failed to prove that the disputed trees were exclusively owned by them. It was also held that the plaintiffs failed to prove the alleged obstruction by the defendant in enjoyment of the said trees and as such the plaintiffs were non suited.

5. The appeal was carried to the District Judge. The learned Addl. District Judge after considering the evidence on record and hearing both the parties confirmed the findings recorded by the lower court and dismissed the appeal. Hence the present appeal.

6. At the outset it may be noted that there is absolutely no substantial question of law involved either of the appeals. It is to be noted that the issue regarding ownership of two Tamarind trees was adjudicated by the lower appellate court on the basis of Sale Deed dated 17.1.1940 Exh.57 which was brought on record by none less than the plaintiffs themselves, it

clearly shows that the Tamarind trees were never shown exclusively owned and possessed by the plaintiffs' grand mother Bhagirathibai. The recitals of the said Sale Deed pointed out that the said Tamarind trees were having her common share and therefore, it was held that the said Sale Deed along with the relevant documentary evidence was clear enough to show that the plaintiffs were not exclusive owner of the said trees. I am satisfied that both the courts below have appreciated the evidence on record in proper perspective and there is no scope for interference by this court.

. In the result both the appeals stands dismissed. Consequently Civil Application No.1721 of 2004 and Civil Application No.1715 of 2004 also stands dismissed.